

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: _____

Meeting Type: Regular

Meeting Date: Sep 25, 2014

Action Requested By: Legal

Agenda Type: Resolution

Subject Matter:

Mutual Release and Agreement with Mirabeau Gated Community.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute a Mutual Release and Agreement among the City of Huntsville, Mirabeau Gated Community, LP, and Gary M. Reynolds.

Note: If amendment, Please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what council action will provide, allow and accomplish and; any other information that might be helpful.

Associated Cost: _____

Budgeted Item: Not Applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: 

Date: Sep 19, 2014

RESOLUTION NO. 14-_____

WHEREAS the City Council of the City of Huntsville, Alabama, does hereby declare that the Mayor be, and is hereby authorized to execute a Mutual Release and Agreement among the City of Huntsville, Mirabeau Gated Community, LP, and Gary M. Reynolds, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as a "Mutual Release and Agreement among the City of Huntsville, Mirabeau Gated Community, LP, and Gary M. Reynolds, consisting of nine (9) pages and the date of September 25, 2014 appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 25th day of September, 2014.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 25th day of September, 2014.

Mayor of the City of
Huntsville, Alabama

MUTUAL RELEASE AND AGREEMENT

THIS MUTUAL RELEASE AND AGREEMENT (the "Mutual Release") is entered into by and between the Community Development Department of the City of Huntsville and the City of Huntsville, Alabama (collectively "City"), Mirabeau Gated Community, LP, an Alabama limited partnership (along with its affiliated companies set forth below, collectively "Mirabeau"), and Gary M. Reynolds ("Reynolds") and is dated as of September 23, 2014. The City, Mirabeau, and Reynolds are sometimes individually referred to herein as a "Party" or jointly referred to herein as "the Parties."

WHEREAS, Reynolds is the sole owner and the President of Mirabeau General Corp., which is the sole general partner of Mirabeau Gated Community, LP; and

WHEREAS, Mirabeau Gated Community, L.P., along with affiliated entities, Mirabeau, LP, Mirabeau General Corp., Mill Village Partners, LLC, Condominium Development Partners, LLC, Great American Housing Partners, LLC, and First Priority Management Corporation (collectively "Mirabeau"), have been involved, either directly or indirectly, with the planning, development, construction, maintenance, management, and ownership of a rental apartment complex currently known as Mirabeau Gated Community ("Mirabeau Gated Community") and/or the revitalization of the area bordered by First Street on the west, Newby Road on the east, Bob Wallace Avenue on the south, and Freeman Road on the north, and of an area bordered by Triana Boulevard on the west, Brookside Street on the east, Tenth Avenue on the south, and Governors Drive on the north, known as Lowe Mill (both areas hereinafter collectively referred to as "Lowe Mill").

WHEREAS, the City has loaned money to, provided grants to, and otherwise provided assistance to Mirabeau for the acquisition and/or for the revitalization of the Mirabeau Gated Community and/or for the revitalization of Lowe Mill over the years, including, but not limited to, recently taking assignment of a Mirabeau loan in the original principal amount of One Million Three Hundred Fifty Thousand and No/100 Dollars (\$1,350,000.00) from Cadence Bank (successor in interest to Superior Bank by asset acquisition from the FDIC, as receiver for Superior Bank); and

WHEREAS, the City and Reynolds are aware of a third party, Lowe Mill Development, LLC, that wants to own and manage the Mirabeau Gated Community ("Purchaser"); and

WHEREAS, Purchaser and Reynolds have executed a Sale and Assignment Agreement dated July 23, 2014 that, among other things, transfers Mirabeau Gated Community to the Purchaser; and

WHEREAS, the fulfillment of all obligations in that Sale and Assignment Agreement dated July 23, 2014 is part of the resolution of any and all disputes among the Parties and material to the Parties' agreement contained herein; and

WHEREAS, the Purchaser needs to obtain certain assets, documents, and other information from both the City and from Reynolds and Mirabeau, which said Purchaser is in the process of obtaining or has already obtained; and

WHEREAS, in order to facilitate, in a manner acceptable to the Purchaser and Reynolds, the transition of ownership in the Mirabeau Gated Community from Reynolds and Mirabeau to the Purchaser, and in order to resolve any disputes among the Parties, and in order to mitigate the risks and costs associated with litigation, the Parties have agreed to settle their claims against each other, as more fully set forth herein; and

NOW, THEREFORE, in acknowledgment of the truth of the foregoing recitals, which are hereby incorporated into this Mutual Release and Agreement, and for and in consideration of the mutual promises set forth herein, Ten Dollars (\$10.00) and other good and valuable consideration, which consideration the City, Mirabeau, and Reynolds recognize to be sufficient, the Parties agree as follows:

1. Reynolds represents and warrants that he is either the Owner, Member, President, Manager, General Partner and/or otherwise an authorized representative of Mirabeau LP, Mirabeau Gated Community, LP, Mirabeau General Corp., Mill Village Partners, LLC, First Priority Management Corporation, Great American Housing Partners, LLC, and Condominium Development Partners, LLC.

2. Reynolds represents and warrants that the entities listed in Paragraph 1 of this Mutual Release are the only entities in which he is an owner, partner, member, manager, shareholder, or officer that may have had any dealings with, contracts with, or agreements with the City.

3. Reynolds represents and warrants that he has the authority to sign this Mutual Release on behalf of all the entities listed in Paragraph 1, and that he has the authority to release, remise and forever discharge any claims those entities have or may have had at any time against the City.

4. On the Effective Date, as defined in Paragraph 11 below, Reynolds, both individually, and as the authorized owner, partner, officer, manager, or representative of Mirabeau and all of the entities listed in Paragraph 1 of this Agreement, hereby releases, remises and forever discharges the City, together with its Mayor, Council Members, department heads, employees, agents, departments, affiliated authorities, attorneys, insurers, successors and assigns, and each and all of them, of and from any and all claims, demands, causes of action, and suits of every kind and nature, accrued or unaccrued, whether based on breach of contract, negligence, other torts, breach of warranty, fraud or any other legal or equitable theory or principle, which Reynolds and Mirabeau and the entities listed in Paragraph 1 of this Agreement, or any of them, may now have or may have had at any time heretofore, relating in any way to the Mirabeau Gated Community and/or relating in any way to the revitalization of Lowe Mill; and more particularly, but without in any way limiting the generality of the foregoing, Reynolds and Mirabeau, on the Effective Date, as defined below, release, remise and forever discharge the City, together with its Mayor, Council Members, department heads, employees, agents, subsidiaries and/or departments, affiliated authorities, attorneys, insurers, successors and assigns, from any and all claims Reynolds, Mirabeau, or any entity in which he was or is an owner, shareholder, partner, member, manager, or officer, has or may have at any time heretofore, relating in any way to any loan, grant, note, loan agreement, contract, guaranty, or other agreement with the City, including, but not limited to, any claims or rights arising under that document entitled "Consolidated Financing Agreement And Affordable Home

Ownership Mortgage Financing Program, which is dated September 30, 2008, and more particularly, but without in any way limiting the generality of the foregoing, Reynolds and Mirabeau release, remise and forever discharge the City together with the Mayor, Council Members, department heads, employees, agents, insurers, successor and assigns from any claims which Reynolds or Mirabeau may acquire from HUD through any assignment, subrogation, contribution, indemnity, or otherwise relating to Mirabeau Gated Community or the revitalization of Lowe Mill.

5. On the Effective Date, as defined in Paragraph 11 below, the City hereby releases, remises and forever discharges Reynolds, individually, and his attorneys, insurers, heirs, successors and assigns, as well as Mirabeau and the entities listed in Paragraph 1 of this Agreement, and their respective officers, directors, managers, members, stockholders, partners, employees, agents, subsidiaries, affiliated companies, parent companies, attorneys, insurers, successors and assigns and each and all of them, from any and all claims, demands, causes of action and suits of every kind and nature, accrued or unaccrued, whether based on breach of contract, negligence, other torts, breach of warranty, fraud or any other legal or equitable theory or principle which the City may now have or may have had at any time hereafter relating in any way to the Mirabeau Gated Community or to Lowe Mill, or to claims for indemnity, contribution, or otherwise relating to the United States Department of Housing and Urban Development ("HUD"), or otherwise; and more particularly, but without in any way limiting the generality of the foregoing, the City releases, remises and forever discharges Reynolds and Mirabeau, together with their officers, directors, members, managers, stockholders, partners, employees, agents, subsidiaries, affiliates, companies, parent companies, attorneys, insurers, heirs, successors and assigns from any claims the City has or may have had at any time heretofore, relating to any loans, grants, notes, loan agreements, contracts, guarantees or any and all other agreements whatsoever against Reynolds, Mirabeau, or their related entities; and more particularly, but without in any way limiting the generality of the foregoing, the City releases, remises and forever discharges Reynolds, Mirabeau, together with their officers, directors, members, managers, stockholders, partners, employees, agents, subsidiaries, affiliated companies, parent

companies, attorneys, insurers, heirs, successors and assigns, from any and all claims whatsoever that the City may have now, or which the City may acquire from HUD through assignment, subrogation, contribution, indemnity, or otherwise, relating to the Mirabeau Gated Community or to the revitalization of Lowe Mill.

6. The Parties agree that Bradley Arant Boult Cummings shall serve as escrow agent ("Escrow Agent") and, as such, shall have no liability to any Party hereto, but shall merely hold this executed Mutual Release and certain specified funds in trust until distributed in accordance with the instructions provided herein. All Parties agree to release Escrow Agent from any claims and to indemnify Escrow Agent from any claims by any Party or non-party to this transaction.

7. The City shall, concurrently with its execution of this Mutual Release, transfer a sum certain to the Escrow Agent, said monies are to be for additional cost items incurred by the Purchaser.

8. As additional consideration of the promises and the mutual releases contained herein and for entering into the Sale and Assignment Agreement dated July 23, 2014, with the Purchaser, Mirabeau Gated Community LP is to receive the sum required by said Sale and Assignment Agreement paid by or on behalf of the Purchaser to Mirabeau (the "Additional Consideration").

9. The Escrow Agent has (i) obtained five (5) originals of this Mutual Release signed by the City and Reynolds, and (ii) shall release from escrow the following: (a) the Mutual Release; and (b) those funds specified above in Paragraph 8 now held by the Escrow Agent in trust. At the appropriate time, as referenced in Paragraph 10 below, the Escrow Agent shall release the Mutual Release to the City and Reynolds; and the Escrow Agent, shall release those certain specified funds to the Purchaser.

10. Upon execution by the Parties of this Mutual Release, the Escrow Agent shall promptly remit the funds received from the City to Purchaser (described in Paragraph 9(b) above), and the Escrow Agent shall promptly distribute the Mutual Release documents as follows: three (3) executed originals to the City and two (2) executed originals to Wilmer & Lee for distribution to Reynolds.

11. The Parties acknowledge that the Mutual Release shall be effective upon its execution by the Parties ("Effective Date"). The Parties, however, further acknowledge that should Reynolds default under the Sale and Assignment Agreement dated July 23, 2014, by failing or refusing to transfer Mirabeau Gated Community to Purchaser, the mutual releases set out in Paragraphs 4 and 5 shall be null and void. The Parties further acknowledge that should the Sale and Assignment Agreement dated July 23, 2014, fail to close and the Mirabeau Gated Community fail to be transferred to the Purchaser for any reason other than a default by Reynolds, then this Mutual Release shall remain in full force and effect, EXCEPT that the City will then have as its sole rights the ability to foreclose on Mirabeau Gated Community, or bring suit to obtain title to the real property, including obtaining a judicial foreclosure against Reynolds and/or any of the Mirabeau entities, but the sole remedy for the City in any such litigation shall be the enforcement of the mortgage lien(s) associated with or in the real property that contains Mirabeau Gated Community, with neither Reynolds nor any of the Mirabeau entities having liability for any deficiency or otherwise.

12. In further consideration of the promises and the mutual releases contained herein, the Parties agree that the terms and provisions of this Mutual Release shall be binding upon and inure to the benefit of the Parties hereto and their respective officers, directors, shareholders, affiliated companies, successors and assigns.

13. This Mutual Release is not in any way an admission or concession of the truth of any allegation by any Party hereto, nor should this Mutual Release be construed otherwise. None of the Parties to this Mutual Release have admitted liability to any of the Parties hereto.

14. The Parties represent that they have fully read and understood this Mutual Release and acknowledge that it is final and binding on them.

15. The Parties warrant that they are represented by counsel of their choosing or that they have independently made their own analysis and decision to enter into this Mutual Release, and that they consider this Mutual Release to be fair and reasonable.

16. The Mutual Release contains the entire agreement between the Parties and the terms of the Mutual Release are contractual and not a mere recital. This is a fully integrated agreement. It may not be altered or modified by oral agreement or representation or otherwise except by a writing of subsequent date hereto signed by all Parties at the time of the alteration or modification.

17. This Mutual Release shall be construed and interpreted in accordance with the laws of the State of Alabama.

18. THE PARTIES ACKNOWLEDGE THAT ALL OF THEM HAVE BEEN REPRESENTED BY LEGAL COUNSEL OF THEIR OWN CHOOSING IN ENTERING INTO AND MAKING THIS MUTUAL RELEASE; THAT NO REPRESENTATIONS BY ANY OTHER PARTY HAVE INDUCED THEM TO ENTER INTO THIS MUTUAL RELEASE, BUT THAT ALL OF THEM HAVE DONE SO PURSUANT TO THEIR OWN FREE WILL AND WITH ADVICE OF COUNSEL OF THEIR OWN CHOOSING; AND THAT THIS MUTUAL RELEASE WILL REMAIN IN EFFECT NOTWITHSTANDING THE DISCOVERY OF OR EXISTENCE OF ANY ADDITIONAL FACT OR ANY FACTS DIFFERENT FROM THOSE WHICH EACH NOW KNOWS OR BELIEVES TO BE TRUE.

19. Each of the Parties signing this Mutual Release expressly represents that it or he has the full authority to sign this Mutual Release and bind the person or entity on whose behalf it is signing. Each of the Parties signing this Mutual Release expressly represents that it or he has not heretofore assigned to any other person or entity all or any portion of any claim that any Party may have against any other Party.

20. The City represents that City Council approval of this Mutual Release either has been obtained or is not necessary for it to be binding and enforceable.

IN WITNESS WHEREOF, the Parties hereto, through their respective representatives, set their hands on the dates indicated below.

ATTEST:

CITY OF HUNTSVILLE

Peter Joffrion
Title: City Attorney
Dated: _____

By: _____ [SEAL]
Name: Thomas Battle
Title: Mayor
Dated: _____

**CITY OF HUNTSVILLE
COMMUNITY DEVELOPMENT**

By: _____ [SEAL]
Name: Kenneth Benion
Title: _____
Dated: _____

MIRABEAU GATED COMMUNITY, LP

By: Mirabeau General Corp. [SEAL]
Title: It's General Partner

By: _____ [SEAL]
Title: President
Dated: _____

GARY M. REYNOLDS,
an individual

By: _____ [SEAL]
Dated: _____

**ESCROW AGENT AGREES TO CARRY OUT THE INSTRUCTIONS PROVIDED HEREIN
AND IS SIGNING THIS MUTUAL RELEASE ONLY IN ITS CAPACITY AS ESCROW AGENT.**

ESCROW AGENT

By: Bradley Arant Boulton Cummings

By: _____

Name: T. Michael Brown

Dated: _____

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Legal

Council Meeting Date: 9/25/2014

Department Contact: Peter Joffrion

Phone # 427-5026

Contract or Agreement: Mutual Release and Agreement

Document Name: Mutual Release and Agreement - Mirabeau & Gary Reynolds

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:

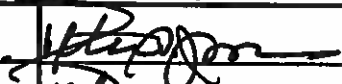



Account Number:

Procurement Agreements

<u>Not Applicable</u>	<u>Not Applicable</u>
-----------------------	-----------------------

Grant-Funded Agreements

<u>Not Applicable</u>	Grant Name:
-----------------------	-------------

Department	Signature	Date
1) Originating		9-15-14
2) Legal		9-15-14
3) Finance		9/23/14
4) Originating		9-15-14
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		